

OCT 18 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS IGNACIO PONCE,

Defendant - Appellant.

No. 05-30011

D.C. No. CR-04-02017-FVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief Judge, Presiding

Submitted September 12, 2005^{**}

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Carlos Ignacio Ponce appeals the district court's judgment imposing a 120-month sentence following his guilty-plea conviction for conspiracy to distribute a controlled substance, distribution of a controlled substance and possession with

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Ponce contends on appeal, as he did below, that the district court improperly included his 1996 conviction for reckless driving in calculating his criminal history score because that prior conviction was totally suspended. We disagree. *See* U.S.S.G. § 4A1.2(a)(3). Moreover, the district court sentenced Ponce to the mandatory minimum under the statute of conviction. *See* 21 U.S.C. § 841.

AFFIRMED.